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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,011	11/01/2001	Roy K. Greenberg	PA-5270-RFB	3255

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Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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02/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/003,011	Applicant(s) GREENBERG ET AL.	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-20,22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/14/08 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-5,8-20,22,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of palestrant (4,832,055) in view of Middleman et al. (5,486,183).

With respect to claims 1, 22, Boyle et al., disclose a medical grasping device comprising: an elongate control member (18,520) having an atraumatic distal tip section, as best seen in FIG.1, and a proximal end portion; the elongate control member further including a grasping portion (14,16,530) proximal the distal tip section; an outer sheath (46,48) with a passageway therethrough, as best seen in FIG.2, surrounding the elongate control member and relatively movable with respect thereto.

Although Boyle et al teach of a control assembly, as set forth in column 24, lines 19-45, it is noted that Boyle et al., did not teach of a control assembly as claimed by applicant. However, in a similar art, Cathcart et al., evidences such a control assembly to enable the control deployment and displacement of a device.

Therefore, given the teaching of Cathcart et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the control assembly, as taught by Cathcart et al, in the device of Boyle et al., to urge the medical grasping device from a retracted to an expanded position.

The above combination of references teaches all the limitations, the outer sheath being flexible and kink-resistant, as set forth in column 11, lines 42-67, column 12, lines 1-33, the atraumatic distal tip section tapers to a blunt and rounded tip; as best seen at the end of the control member 18, the control assembly including an actuation section that is grippable for reciprocal movement along the handle, as set forth in column 6, lines 3-25 of Cathcart et al., and a connecting block (25) as set forth in column 6, lines 3-25 of Cathcart et al.

It is noted that the above combination of references teaches all the limitations, except for a plurality of wire loops fixed to the elongate member; and, the outer sheath and the elongate control member being relatively moveable to urge the plurality of loops, a radius of each loop expanding to overlap adjacent loops as the plurality of loops are urged distally from the distal end, the radius of each loop decreasing to tighten around the objects as the plurality of loops are retracted into the outer sheath, as claimed by applicant. However, in a similar art, Middleman et al, columns 37-43, lines 1-

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67 provide the evidences of the use of a plurality of wire loops fixed to the elongate member; and, the outer sheath and the elongate control member being relatively moveable to urge the plurality of loops, a radius of each loop expanding to overlap adjacent loops as the plurality of loops are urged distally from the distal end, the radius of each loop decreasing to tighten around the objects as the plurality of loops are retracted into the outer sheath to provide a device for manipulating matter in confined or inaccessible space or to capture and remove biological material from a body lumen.

Therefore, given the teaching of Middleman et al it would have been obvious to one having ordinary skill in the art, at the time the invention was made to incorporate the design of the grasping device of Bates in the grasping device of Boyle/Cathcart et al. to provide a device for manipulating matter in confined or inaccessible space or to capture and remove biological material from a body lumen.

It is also noted that the above combination of references did not teach of a plurality of loops when fully deployed each loop extending substantially perpendicular to a longitudinal axis of the elongate control member, the plurality of loops being substantially arranged in a cross-sectional region proximal from the atraumatic tip section, each loop extending radially outward from the elongate control member in the cross-sectional region and being equally spaced angularly around the elongate control member in the cross-sectional region; as claimed by applicant. However, in similar art, Palestrant provides the evidences of the use of a grasping device with wire loops when fully deployed each loop extending substantially perpendicular to a longitudinal axis of the elongate control member, the plurality of loops being substantially arranged in a

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cross-sectional region proximal from the atraumatic tip section, each loop extending radially outward from the elongate control member in the cross-sectional region and being equally spaced angularly around the elongate control member in the cross-sectional region to provide a device which extends over the entire cross-sectional area of the blood vessel.

Therefore, given the teaching of Palestrant, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the device of Boyle, as taught by Palestrant, to provide a device which extends over the entire cross-sectional area of the blood vessel.

Claims 6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references above in view of Braunschweiler et al. (5,484,444).

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending through into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references above in view of Gunther et al. (5,330,484).

With respect to claim 3, it noted that the above combination of references did not teach of a hemostatic seal between the sheath and the elongate control member; as claimed by applicant. However, in a similar art, Gunther et al evidence the use of a hemostatic seal to hold the legs of a grid body.

Therefore, given the teaching of Gunther et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle et al., as taught by Gunther et al to provide a hemostatic seal between the sheath and the elongate control member to hold the legs of the grasping portion.

Response to Amendment

Applicant's arguments with respect to claims 13-20, 22-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
January 30, 2009